



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

NO. 77-287

IN THE MATTER OF THE
ESTATE OF GEORGE WAYLAND
EVANS, Deceased
OTTO W. REEL, Executor, Appellant,

v.

IOWA DEPARTMENT OF REVENUE, Appellee.

ON APPEAL FROM THE SUPREME
COURT OF IOWA.

MOTION TO DISMISS OR MOTION TO AFFIRM

RICHARD C. TURNER
Attorney General of Iowa

HARRY M. GRIGER
Assistant Attorney General

Lucas State Office Building
Des Moines, Iowa 50319

ATTORNEYS FOR APPELLEE

TABLE OF CONTENTS

	Page
Table of Citations	i
Opinion Below	1
Jurisdiction	1
Question Presented	2
Statement of the Case	2
Argument	3
Conclusion	6

TABLE OF CITATIONS

	Page
Cases	
<i>Dandridge v. Williams</i> , 397 U.S. 471 (1970).	3
<i>Mourning v. Family Publications</i> , 411 U.S. 356 (1973). . .	3
<i>Weinberger v. Salfi</i> , 422 U.S. 749 (1975).	3,4
<i>Zucht v. King</i> , 260 U.S. 174 (1922).	3
Constitutional Provisions	
Amendment 14, section 1, United States Constitution	
Article I, section 9, Iowa Constitution	
Statutes and Rules	
28 U.S.C. § 1257 (2)	1,3
§ 450.51, Code of Iowa, 1973.	1,2,3,4,5,6
United States Supreme Court Rule 16(1)(b) and (d). . . .	1

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Appellee hereby makes a Motion to Dismiss pursuant to United States Supreme Court Rule 16(1)(b) for want of a substantial federal question in this Appeal. In the alternative, as permitted by United States Supreme Court Rule 16(1), appellee hereby makes a Motion to Affirm pursuant to United States Supreme Court Rule 16(1)(d) since § 450.51, Code of Iowa, 1973, does not violate the Due Process clauses of the Iowa and United States Constitutions.

Opinion Below

The opinion of the Iowa Supreme Court delivered on May 25, 1977, is appended to appellant's Jurisdictional Statement and is reported at 255 N.W. 2d 99 (Iowa 1977).

Jurisdiction

Appellant invokes the jurisdiction of this Court under 28

U.S.C. § 1257(2) since the Iowa Supreme Court held that § 450.51, Code of Iowa, 1973, complies with the requirements of the Due Process clause of the United States Constitution. However, appellee maintains, *infra*, that this Court should not take jurisdiction of this appeal since no substantial federal question has been raised, the federal question raised herein having been resolved by previous decisions of this Court.

Question Presented

Does § 450.51, Code of Iowa, 1973, violate the Due Process clauses of the Iowa and United States Constitutions by requiring the exclusive use of standard mortality tables in computing the value of a life beneficiary's interest in a testamentary trust?

Statement of the Case

During the administration of the George Wayland Evans estate, the appellant took issue with the use by appellee of mortality tables to determine the value of a life estate to beneficiary Paula Jo Faulconer for purposes of computing the inheritance tax owing on the estate. Alleging that Paula was suffering from severe cerebral palsy, appellant calculated the value of her life estate as if she were eighty years old and paid the corresponding taxes of \$1,785.00. Appellee used standard mortality tables, as required in all cases by § 450.51, Code of Iowa, 1973, to calculate the value of the life estate based upon Paula's actual age of sixteen years and computed a tax of \$9,190.85. The monetary difference between the two positions is \$7,405.85. Therefore, appellant filed an Application for Determination of Iowa Inheritance Tax Owing in Iowa District Court in Jackson County claiming that the use of the mortality tables created a conclusive presumption as to Paula's life expectancy which was at odds with reality and, thus, unconstitutional in derogation of due process of the law.

In Jackson County District Court appellant attempted to introduce medical evidence to prove Paula had a life expectancy of forty years, arguing that this medical evidence, and not the mortality tables, should be used to determine the value of Paula's life estate for purposes of computing inheritance tax. Appellee objected to the admissibility of this evidence as being irrelevant and immaterial. The district court sustained appellee's objection, holding that the use of the mortality tables did not offend the principles of due process of the law. The district court's decision was affirmed by the Iowa Supreme Court in its opinion issued May 25, 1977, which opinion is now on appeal to this Court.

ARGUMENT

I

MOTION TO DISMISS: APPELLEE MOVES TO DISMISS THE APPEAL SINCE IT RAISES NO SUBSTANTIAL FEDERAL QUESTION.

Appellant asserts that § 450.51, Code of Iowa, 1973, violates the Due Process clauses of the Iowa and United States Constitutions. Thus, a federal question has been raised, but is it substantial? Under 28 U.S.C. § 1257(2) a federal question is not substantial if it has been settled by previous decisions of this Court. *Zucht v. King*, 260 U.S.174, (1922). While this Court has never decided a case based on the same facts as this Appeal, this Court has decided cases involving the same constitutional questions raised here. *Weinberger v. Salfi*, 422 U.S.749 (1975); *Mourning v. Family Publications Service*, 411 U.S.356 (1973); *Dandridge v. Williams*, 397 U.S.471 (1970). In *Weinberger v. Salfi*, *supra*, this Court wrote a fifty-six page decision involving, in part, the constitutionality of a conclusive presumption. The Court noted:

"Because we are aware that our various holdings in related cases do not all sound precisely the same note, we will explain ourselves at some length." *Weinberger v. Salfi*, 422 U.S. 749, 768 (1975).

The Court thereupon undertook an extensive explanation of its views on conclusive presumptions clarifying the constitutional criteria by which to measure such presumptions. The *Weinberger* decision was relied upon heavily by the Iowa Supreme Court in its unanimous decision herein upholding the constitutionality of § 450.51, Code of Iowa, 1973. This Court should not be called upon to restate its position in *Weinberger*. This Court intended that its position in *Weinberger* would provide guidelines for similar cases, and such has been the case herein. It is unnecessary for the Court to reiterate its position on conclusive presumptions, and, for this reason, the federal question presented by this Appeal is not substantial, having been effectively disposed of by *Weinberger*.

More specifically, the Court stated in *Weinberger* that, when determining the constitutionality of a conclusive presumption, first it must be determined whether the presumption involves a suspect classification, fundamental right, or important liberty. If not, the test then becomes one of rationality: is the statute rationally related to the goals which it seeks to achieve? If so, then the conclusive presumption is constitutional. And, while the foregoing analysis generally involves equal protection claims, the Court stated that if a statute satisfies this equal protection test, then it also satisfies the requirements of due process of the law. The foregoing analysis is derived from both *Dandridge*, supra, and *Salfi*; however, this rational basis test has been stated and employed in cases too numerous to recite. Under this analysis the Iowa Supreme Court held: taxing the privilege of inheriting money does not involve a suspect classification, a fundamental right, or a protected liberty; consequently, a rational basis test is appropriate; under

the rational basis analysis, use of the mortality tables is reasonably calculated to determine a tax, the amount of which depends on one of life's biggest uncertainties -- the date when a person is going to die. In its analysis the Iowa Supreme Court unanimously upheld the constitutionality of § 450.51, Code of Iowa, 1973. Appellee maintains that because of the voluminous case law on how to apply a rational basis test, and because of the recent and specific case law on how to apply a rational basis analysis to a conclusive presumption, this Appeal does not present a substantial federal question.

II

MOTION TO AFFIRM

The main reasons for this Motion to Affirm have been discussed already in appellee's argument on its Motion to Dismiss, supra. The Iowa Supreme Court did not err in its decision herein. The issue for resolution is whether § 450.51, Code of Iowa, 1973, violates due process of law. In resolving that issue the Iowa Supreme Court first held that the "right to take by succession" is not a constitutionally protected area or suspect classification. Consequently, the Iowa Supreme Court used a rational basis analysis to determine the constitutionality of § 450.51, Code of Iowa, 1973. Under that analysis the Iowa Supreme Court found that the use of mortality tables to determine the value of a life estate for purposes of computing inheritance tax did not violate due process of law since such a method is "broadly based on reason and logic." The issue herein and its resolution are not complicated. This appeal requires the use of a standard rational basis analysis to resolve it. The Iowa Supreme Court has correctly applied the test in unanimously determining that § 450.51, Code of Iowa, 1973, does not violate due process of law. Said decision is correct and should be affirmed.

CONCLUSION

Appellee respectfully requests this Court either to sustain its Motion to Dismiss since the Appeal does not involve a substantial federal question, or to sustain its Motion to Affirm since § 450.51, Code of Iowa, 1973, does not violate the Due Process clauses of the Iowa and United States Constitutions.

Respectfully submitted,

RICHARD C. TURNER
Attorney General of Iowa

HARRY M. GRIGER
Assistant Attorney General
Lucas State Office Building
Des Moines, Iowa 50319

Attorneys for Appellee

PROOF OF SERVICE

STATE OF IOWA, POLK COUNTY, SS:

I, Harry M. Griger, being first duly sworn, do on oath say that I served three printed copies of the foregoing Motion to Dismiss or Motion to Affirm on the 23rd day of August, 1977, by depositing the same in a United States mailbox, with first class postage prepaid, addressed to Allen E. Brennecke, MOTE, WILSON & WELP, and Dennis Roberson, 302 Masonic Temple Building, Marshalltown, Iowa, 50158.

Harry M. Griger
Harry M. Griger
Assistant Attorney General
Lucas State Office Building
Des Moines, Iowa 50319

Subscribed and sworn to before me at Des Moines, Iowa,
by Harry M. Griger, this _____ day of _____, 1977.

Notary Public, State of Iowa